

REMARKS

This application provides for, *inter alia*, herbicidal compositions which may be used against harmful plants in tolerant or resistant crops of sugar beets. The inventive compositions and methods use a combination of at least two different herbicides.

This Amendment cancels all the claims in favor of a new set of claims. The new set of claims find support in the claims which they replace. Claims 32 and 44 are directed to herbicidal compositions and a method of use wherein the broad-spectrum is glufosinate-ammonium. Claims 33 and claim 45 provide for herbicidal compositions and a method of use wherein the broad-spectrum herbicide is a glyphosate compound and the herbicide compound (B) are selected from the groups (B1) and (B2). Claim 34 and 46 relate to the preferred embodiment wherein the herbicidal compositions and method of use comprise broad-spectrum herbicides selected from groups (A1) and (A3). These new claims serve to round-out the patent protection sought and do not limit the scope of the claimed subject matter. Moreover, as these claims find support in the claims which they replace, no new matter is added.

*DK  
new*  
Pursuant to the provisions of 37 CFR 1.136(a), Applicants petition the Assistant Commissioner to extend the time period to respond to the outstanding Amendment by three (3) months. A check for \$920.00 is enclosed to cover the cost of this petition. Should any additional fee be due, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, to Deposit Account No. 50-0320.

Claims 11 to 16 stand rejected under 35 USC § 101. It is urged that this rejection is moot and should be withdrawn.

Claims 18 to 20 provisionally stand rejected under 35 USC § 101 for claiming the same invention as claimed in claims 19 and 20 copending application Serial No. 09/762,673. Applicants respectfully disagree as these claims differ in scope.

For example, claims 18, 19 and 20 in this application recite the ethametsulfuron, desmediphan and quinmerac. These compounds are not recited in the composition claims 19 and 20 of the copending application of the present invention. Accordingly, as the claims differ in scope, they do not claim the *same* invention and withdrawal of this rejection is requested.

Claims 18 to 20 stand rejected for allegedly being anticipated or in the alternative being obvious over Flint et al., U.S. Patent 6,234,072 ("Flint"). In view of the foregoing, reconsideration of this rejection is requested.

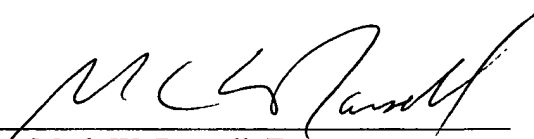
First, it should be noted that this rejection does not apply to claims 32, 34, 36 to 44 and 46 because these claims do not recite glyphosate compounds. Since Flint is limited to glyphosate compositions and methods in which one of the compounds is a glyphosate compound and does not provide any motivation to substitute another herbicide for glyphosate, Flint cannot teach or suggest these claims. Moreover, Flint only describes compositions wherein the combination comprises glyphosate, sethoxydim, quizalofop, clethodim, sethoxydim and fenoxaprop. Accordingly, it is urged that claims 33, 35, 45 and 47 are patentable over Flint.

With respect to the remaining claims, it should be noted that this application claims priority to German patent application 198 36 726.0, filed August 13, 1998, a date which is earlier than the March 9, 1999 filing date of Flint. While it is noted that Flint claims priority to a provisional application, there is no evidence presently of record which indicates that this provisional application is identical to Flint. The Notice of Acceptance dated April 30, 2001 indicates that the Receiving Office forwarded to the US Patent Office a translation of the international application. Hence, it is believed that a certified English translation is not required. If, however, a translation is required, one shall be provided.

Favorable action is requested.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP  
Attorneys for Applicants

By: 

Mark W. Russell, Esq.  
Registration No. 37,514  
745 Fifth Avenue  
New York, New York 10151  
(212) 588-0800 tel.  
(212) 588-0500 fax